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JUN 21 1982
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No. 81-2166

In the Supreme Court of the United States

OCTOBER TERM, 1982

J. RICHARD BARBER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to show that petitioner extorted property under color of official right.
2. Whether cross-examination of petitioner was proper.
3. Whether the government properly elicited from witnesses that they or their corporations had pleaded guilty to offenses related to matters charged in petitioner's indictment.
4. Whether the trial court properly instructed the jury on the elements of mail fraud.
5. Whether the trial court properly declined to hold a hearing on petitioner's allegation of juror bias.
6. Whether a State Alcohol Beverage Control Commission is an "enterprise" within the meaning of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961(4).
7. Whether the trial court properly concluded that petitioner's immunized statements were not used in connection with his indictment and prosecution.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-32a) is reported at 668 F.2d 778. The order of the district court denying petitioner's motion to dismiss count one of the indictment (Pet. App. 33a-69a) is reported at 476 F. Supp. 182. The district court's findings and conclusions on petitioner's motion to dismiss the indictment because he had been granted immunity (Pet. App. 70a-93a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 14, 1982. A petition for rehearing was denied on March 19, 1982 (Pet. App. 109a). The petition for a writ of certiorari was filed on May 18, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of West Virginia, petitioner was convicted on one count of conducting the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(c) (Count 1), six counts of extortion, in violation of 18 U.S.C. 1951 (Counts 2-5, 19-20), and 13 counts of mail fraud, in violation of 18 U.S.C. 1341 (Counts 6-18). He was sentenced to concurrent terms of imprisonment of three years on each count. The court of appeals affirmed (Pet. App. 1a-32a).

The evidence at trial showed that from December 1971 to September 1976 petitioner used his position as Commissioner of the West Virginia Alcohol Beverage Control Commission (ABCC) to obtain free liquor for himself and numerous high state officials and to solicit and accept cash payments from certain liquor companies. The ABCC held a monopoly on alcoholic beverage sales in West Virginia. Petitioner obtained free liquor by manipulating an ABCC "withdrawal" system that permitted liquor company representatives, for business promotional purposes, to withdraw liquor from the state's warehouse and then reimburse the state for its withdrawal. Petitioner also misused a "breakage" system whereby a liquor company would absorb the loss when a shipment included damaged products (Pet. App. 3a-4a).

The withdrawal system was first developed in the early 1960's to permit liquor company representatives to withdraw samples of their product from the state inventory. The procedure required the liquor company representative, using a withdrawal form (Form 180), to request permission from the Commissioner to withdraw the desired quantity of liquor. If he approved, the Commissioner would sign Form 180, and the liquor representative would sign the document after his company had received

the liquor. The State would then bill the liquor company for the cost of the withdrawn liquor by mailing the Form 180 and a "Debit Memorandum" (Form 42). The State was then given a credit against the next shipment of liquor purchased for the State's inventory (Pet. App. 3a; I C.A. App. 299-300; II C.A. App. 774, 778-779, 821, 1018; Supp. C.A. App. 19, 22, 37-38).[1]

Petitioner, however, misused the withdrawal system. Upon receipt of requests for liquor from the governor's office, members of the state legislature, agency officials, and various social and charitable groups, petitioner would withdraw liquor from the state inventory, signing Form 180. The form was then submitted to a liquor company representative for his signature. Although the liquor company never got any liquor from the inventory when petitioner used the withdrawal system in this manner, the company would sign the form anyway, usually acknowledging both its "request" and its "receipt" of liquor. In addition, as with the legal procedure, petitioner would mail Form 180 together with a "Debit Memorandum" to the liquor company for payment. The liquor company would then reimburse the State through the credit mechanism (Pet. 9-10; Pet. App. 3a: II C.A. App. 628, 633, 846-847).

Although a few company representatives accepted petitioner's system as a promotional device (II C.A. App. 756), most expressed displeasure at this forced tribute. For example, Robert Weisenberger, a manager for James B. Beam Distilling Company, wrote the company's broker, John Sims: "We have been clobbered by the State

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[1] "C. A. App." refers to the appendix in the court of appeals. "Supp. C.A. App." refers to the government's supplemental appendix in the court of appeals.

of West Virginia, and I mean clobbered * * *. Because of these two debit memos we had to give up almost $2 per case on the total order of 2,800 cases. I fully understand the reasoning and the need of the Commission, but the extent of the situation is a sham" (I C.A. App. 375).[2] Robert McLean, a vice-president of Joseph E. Seagram & Sons, Inc., wrote numerous memos to his administrative manager, Anthony Russo, characterizing petitioner's withdrawals as "rape" (II C.A. App. 572, 574-575, 1041, 1043-1044).[3] Schenley Affiliated Brands Corporation officials discussed the legal impropriety of petitioner's withdrawals with each other and even with petitioner. In August 1974 Charles Buscher, vice-president of Schenley, wrote the West Virginia regional manager: "Vic, every time I okay one of these West Virginia debit memorandums I do so with tongue in cheek. With as much respect that I have for Dick Barber, I know that eventually these type sample withdrawals are going to get him in serious trouble" (I C.A. App. 166). On October 15, 1974,

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[2] The 30 cases of specialty decanters mentioned in the memo are the subject of Count 2, charging petitioner with extortion under color of official right (18 U.S.C. 1951).

[3] Withdrawals of Seagram's products were the subject of two mail fraud counts (Counts 6 and 7). Withdrawals of products of two Seagram divisions—Calvert Distillers Company and General Wine & Spirits Co.—were the subject of one Hobbs Act (Count 3) and two mail fraud (Counts 8 and 9) counts. The Hobbs Act count charged that petitioner extorted under color of official right 30 cases of Mattingly & Moore half-pints in April 1976 for use in the general election. These cases were ordered by Calvert's representative in response to petitioner's statement that he needed a "goodly amount" of Mattingly & Moore half-pints (I C.A. App. 537-538). In addition, the same Calvert representative testified that petitioner advised him that Calvert was subject to greater withdrawals because of the tremendous volume of Calvert's business in the State (*id.* at 544).

Buscher wrote to petitioner: "I must advise that this is not a proper method of withdrawing merchandise. * * * [W]e can't continue to allow this to be done" (*id.* at 169).[4]

Petitioner also manipulated the "breakage" system in a similar fashion. Normally, when a liquor company's shipment to the State included damaged products, the state warehouse would send an "Affidavit Concerning Damage" to the company, which would then absorb the loss (Pet. App. 4a). Petitioner used this system, however, to obtain free liquor from National Distillers & Chemical Corp. and E. & J. Gallo Winery. Petitioner set aside liquor for his own use and then sent the companies an "Affidavit Concerning Damage" falsely stating that the liquor had been damaged in shipment (I C.A. App. 15, 21, 208, 218-219; II C.A. App. 873, 877; Supp. C.A. App. 23-31, 44-46).

Petitioner further solicited and received thousands of dollars in bribes from several liquor companies. For example, petitioner asked David Robbins of the American Distilling Company to arrange for political contributions from the company. Robbins conveyed petitioner's solicitation to the president, who approved a $1000 contribution. Robbins, in turn, delivered the contribution to petitioner, in cash, in a plain white envelope.[5] Following this first cash payment, Robbins made a dozen or more $500 cash payments during various visits to petitioner in

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[4] Withdrawals of Schenley products were the subject of a Hobbs Act count (Count 4) and four mail fraud counts (Counts 10, 11, 12 and 13).

[5] At the time the payments were solicited and made, corporate political contributions were illegal in West Virginia. See W. Va. Code Ann. § 3-9-14 (Repl. 1979).

Charleston (Pet. App. 4a-5a; II C.A. App. 659-664, 666, 668-669).

On September 17, 1975, petitioner was interviewed by an FBI agent concerning his knowledge of campaign financing during the 1972 gubernatorial election. The agent prepared a summary of the interview on an FBI "302" form. In December 1975 petitioner testified before a grand jury investigating Governor Arch A. Moore. Immediately before his testimony petitioner was interviewed by FBI agents, who then prepared another interview report (Pet. App. 5a).

On June 26, 1979, almost two months after the return of the indictment, petitioner asserted that he had been granted immunity in December 1975 by the former United States Attorney in return for his testimony before the grand jury; he contended that the indictment should be dismissed because it was derived from this immunized testimony. Following the filing of petitioner's motion, the United States Attorney located the transcript of petitioner's December 1975 grand jury testimony. This was the first time anyone connected with the investigation leading to petitioner's indictment had seen petitioner's 1975 testimony (Pet. App. 91a-92a; III C.A. App. 1201-1202). The lead FBI case agent in the liquor investigation, however, did have a copy of the December 1975 interview report as early as May 5, 1978, and had disseminated copies to other agents and to the United States Attorney's office in the early stages of the liquor investigation (III C.A. App. 1202-1203, 1352).

After hearings on the question of immunity, the trial court found that the United States Attorney had implicitly assured petitioner that his responses to questions in the September and December 1975 interviews and the December 1975 grand jury hearing "would not be used against him either directly or through leads gained there-

from" (Pet. App. 10a, 73a). After hearing testimony from individuals in the United States Attorney's Office, the Bureau of Alcohol, Tobacco, and Firearms, and the FBI, however, the court concluded that no part of the government's case nor any evidence utilized in the indictment and preparation for trial had stemmed from the 1975 interviews or from petitioner's grand jury testimony.[6] All evidence used by the government was derived from wholly independent sources (Pet. App. 92a). In addition, the court determined that "neither the subject matter of the investigation nor [petitioner's] involvement therein was in any manner * * * focused upon by virtue of the immunized statements and testimony or the fruits thereof, but was similarly the result of evidence obtained from legitimate and wholly independent sources" (Pet. App. 92a-93a).

ARGUMENT

1. Petitioner contends that the evidence was insufficient to show that he extorted property under color of official right (Pet. 32-42). He urges that the court of appeals was incorrect in concluding that once the government showed that the liquor companies gave him free liquor, extortion could be presumed unless petitioner produced a "convincing explanation." Petitioner contends that this "presumption" improperly shifts the burden of proof. Petitioner's argument, however, misconstrues the court's opinion. The court correctly held that the evidence

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[6] The FBI form 302 dealt with a brief period from July 1972 to November 1972 and related only to petitioner's campaign fund-raising activities. Hence, the report did not touch on petitioner's extraction of free liquor or on his receipt of monies after November 1972 (see III C.A. App. 1352-1353).

was sufficient to show that the companies' motivation for authorizing the withdrawals focused on petitioner's public office, and that the payments were thus not given voluntarily.

As the court of appeals noted (Pet. App. 12a-13a, quoting *United States* v. *Hedman*, 630 F.2d 1184, 1194-1195 n.4 (7th Cir. 1980), cert. denied, 450 U.S. 965 (1981)), the provision "under color of official right" does not

> "require proof of specific acts by the public officials demonstrating force, threats, or the use of fear so long as the victim consented [to the provision of a benefit] because of the office or position held by the official who obtained the money.
>
> If the public official knows the motivation of the victim focuses on the public official's office and money is obtained by the public official which was not lawfully due and owing to him or the office he represented, that is sufficient to satisfy the requirements of the law of extortion under color of official right.
>
> The mere voluntary payment of money would not constitute extortion."

Hence an outward expression of compulsion or inducement, an articulated *quid pro quo*, is not required. The courts of appeals have consistently so held. See *United States* v. *French*, 628 F.2d 1069, 1071-1075 (8th Cir. 1980), cert. denied, 449 U.S. 956 (1980); *United States* v. *Grande*, 620 F.2d 1026, 1031 (4th Cir. 1980); *United States* v. *Butler*, 618 F.2d 411, 417-420 (6th Cir.), cert. denied, 447 U.S. 927 (1980); *United States* v. *Cerilli*, 603 F.2d 415, 425-426 (3d Cir. 1979), cert. denied, 444 U.S. 1043 (1980); *United States* v. *Phillips*, 577 F.2d 495, 503 (9th Cir.), cert. denied, 439 U.S. 831 (1978); *United States* v. *Hall*, 536 F.2d 313, 321 (10th Cir.), cert. denied, 429 U.S. 919 (1976); *United States* v. *Hathaway*, 534 F.2d 386, 393 (1st Cir.), cert. denied, 429 U.S. 819 (1976);

United States v. *Trotta*, 525 F.2d 1096, 1098-1099 (2d Cir. 1975), cert. denied, 425 U.S. 971 (1976).

In the instant case, the evidence showed that because of petitioner's misuse of his office, the liquor companies were induced to give free liquor. See *United States* v. *Hathaway*, *supra*, 534 F.2d at 393; *United States* v. *Mazzei*, 521 F.2d 639, 644-645 (3d Cir.), cert. denied, 423 U.S. 1014 (1975). Even though there was little testimony from liquor company representatives about why they gave free liquor, "[i]t is inescapable that the authorization would not have been given had not [petitioner] been Commissioner" (Pet. App. 15a). Moreover, the evidence showed that the liquor companies which gave free liquor did in fact feel compelled to do so. The James Beam representative complained that the company had been "clobbered" by the State; a vice-president of Seagram & Sons, Inc., characterized the petitioner's withdrawal of free liquor as "rape." Petitioner manipulated the withdrawal system by first taking the liquor himself, then getting the companies to sign a form stating that the liquor had been for their own use. As the court of appeals noted, "[r]atification of a *fait accompli* is far less likely [than an act initiated by the donor] to reflect a donative intent" (Pet. App. 16a-17a). Thus, the evidence was sufficient for the jury to infer that the motivation for the payments was petitioner's office, not charity.[7]

2. Petitioner next contends (Pet. 42-46) that the prosecutor improperly cross-examined him about his refusal

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[7] Hence the court of appeals' observation (Pet. App. 16a) that petitioner offered no "convincing explanation" does not represent a shift in the burden of proof. The government's affirmative evidence was sufficient to show that petitioner extorted the liquor payments "under color of official right" and that the liquor companies did not give free liquor out of friendship for the petitioner. The fact that

to testify before the grand jury. The court of appeals correctly held, however, that in his previous answers petitioner had "opened the door" to questioning about his failure to appear before the grand jury (Pet. App. 24a).

During cross-examination, petitioner suggested that the government had not provided him with an opportunity to explain his position on the subject of his indictment. At that point, the United States Attorney advised the court and petitioner's counsel that petitioner's answer had opened the door to impeachment concerning his refusal to testify before the grand jury. The court then offered petitioner an opportunity to retract or amend his statement. When he declined to do so, the United States Attorney asked petitioner whether it was not true that he had refused to testify before the grand jury that was investigating the liquor withdrawal system (II C.A. App. 861-864).

This line of questioning was entirely proper. Unlike *Doyle* v. *Ohio*, 426 U.S. 610 (1976), in which the prosecution sought to impeach a defendant's explanation by referring to his post-arrest silence, here the government sought to impeach petitioner's denial that he had even been asked any questions by the government. Cf. *United*

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petitioner offered no "convincing explanation" merely made it all the more reasonable for the jury to draw those conclusions.

The theory that petitioner incorrectly attributes to the court of appeals clearly was not offered to the jury as an acceptable basis for conviction. The trial judge instructed the jury that "neither the mere voluntary payment of money, including political contributions whether solicited or not, nor the delivery of property, unaccompanied by any reasonable fear of economic loss, constitutes extortion, unless the payment or delivery was made under some form of compulsion or inducement by virtue of the defendant's office * * *" (Pet. 22 n.6).

States v. *Dixon*, 593 F.2d 626, 630 (5th Cir.), cert. denied, 444 U.S. 861 (1979). Indeed, petitioner effectively consented to questioning on this subject. The trial court advised him of the government's impeachment evidence and gave him a chance to amend his answer before the government could mention his failure to testify to the grand jury.[8]

3. Petitioner contends (Pet. 46-48) that the trial court improperly permitted the government to introduce evidence of his co-participants' guilty pleas. This contention is without merit. The district court properly allowed five witnesses to testify about guilty pleas not as substantive evidence of petitioner's guilt, but rather as proper subjects for impeachment.

On cross-examination of five government witnesses, petitioner elicited testimony that his activities had not "harmed" them or their companies. Accordingly, the trial court allowed the government to impeach the witnesses on redirect examination by asking whether they, or the corporations for which they worked, had been "harmed" by pleading guilty (see, *e.g.*, I C.A. App. 249, 314-318, 322). This questioning was proper. Petitioner had invited testimony concerning guilty pleas by raising the question

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[8] Petitioner's reliance on *Grunewald* v. *United States*, 353 U.S. 391 (1957), is inapposite. In *Grunewald* the prosecutor sought to impeach a defendant's answers to certain questions by cross-examination which revealed that the defendant had claimed his Fifth Amendment privilege on the very same questions before the grand jury. This line of questioning was improper because the defendant's plea of the Fifth Amendment was not inconsistent with his later testimony at trial. *Id.* at 423. Here, by contrast, the government asked not the same questions but whether petitioner had ever been asked *any* questions. In this context, the fact that petitioner had refused to appear before the grand jury was inconsistent with his protestation of constant willingness to cooperate.

of harm. Hence the government properly impeached the witnesses' credibility on this issue by inquiring into the various guilty pleas. See *United States* v. *Binger*, 469 F.2d 275, 276 (9th Cir. 1972).[9]

4. Petitioner next contends (Pet. 48-51) that the trial court erred in its instruction on mail fraud, because it failed to define for the jury what was meant by defrauding "the State of West Virginia and its citizens of the honest and faithful performance of [his] duties as Alcohol Beverage Control Commissioner * * *" (see II C.A. App. 952). Petitioner's point seems to be that the charge permitted the jury to convict him without any showing that the scheme in which he participated influenced his judgment or decisions on official matters. This claim is frivolous. The court of appeals correctly concluded that the charge "clearly and unambiguously spelled out, in a fashion readily understandable, a correct statement of the law" (Pet. App. 18a; see II C.A. App. 950-955, 961-962). Moreover, the evidence as to petitioner's actions afforded the jury ample basis for deciding that his handling of official matters was indeed influenced. Petitioner had no more "official" function than to maintain honest control of the State's liquor inventory. In violation of that duty he appropriated large amounts of free liquor and falsified documents concerning withdrawals and "breakage." It is difficult to imagine a clearer breach of the duty of honest and faithful performance owed by petitioner to the citizens of West Virginia. See Pet. App. 18a n.4; *United*

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[9] Petitioner's reference (Pet. 47) to cases saying that co-participants' guilty pleas may not be used to prove a defendant's guilt are accordingly inapposite. In petitioner's case the pleas were utilized by the government to impeach witnesses, not as substantive evidence of guilt.

States v. *Pintar*, 630 F.2d 1270, 1279-1281 (8th Cir. 1980); *United States* v. *Brown*, 540 F.2d 364, 374-375 (8th Cir. 1976). [10]

5. Petitioner also argues (Pet. 51-52) that he was entitled to an evidentiary hearing to determine whether Beulah James, one of the jurors, was biased. The opinion of the court of appeals, on which we rely, adequately disposes of this contention (Pet. App. 30a-32a). [11]

6. Petitioner next argues (Pet. 53-55) that a public entity such as the West Virginia Alcohol Beverage Control Commission is not an "enterprise" within the meaning of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961(4), and claims that the district court's conclusion (Pet. App. 33a-69a) conflicts with the Sixth Circuit's opinion in *United States* v. *Thompson*, 669 F.2d 1143 (1982), vacated and rehearing granted (Mar. 26, 1982), which held that a government entity cannot be an "enterprise." In view of the vacation of the panel opinion in *Thompson* and the unanimity of the

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[10] In *United States* v. *Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), relied upon by petitioner (Pet. 49-51), the defendant, a state representative, collected a fee for introducing an architectural firm to individuals in other branches of state and city government who had control over the awarding of architectural contracts. The court of appeals refused to sustain his conviction, expressing doubts about the conviction of a state official for "a showing of dishonesty on [his] part * * *, outside his official duties * * *." 583 F.2d at 1024. The court noted, however, that "[t]he concept of fraud upon the public may clearly fall within the ambit of the mail fraud statute where dishonest conduct by a public official directly implicates the functions and duties of that official's public office" *(ibid.)*.

[11] *Smith* v. *Phillips*, No. 80-1082 (Jan. 25, 1982), though it held that a hearing may be sufficient to dispel the possibility of bias, plainly does not require that a hearing be held whenever an allegation of bias is made.

other courts of appeals on the issue, there is no current conflict among the circuits requiring the consideration of this Court.

In any event this Court, in *United States* v. *Turkette*, 452 U.S. 576, 580 (1981), held that RICO's definition of "enterprise" imposes "no restriction upon the associations embraced by [it]" and includes all entities within its literal scope.[12] Consistent with this interpretation, six courts of appeals have held that public entities like the West Virginia ABCC may be "enterprises" within the meaning of the Act. *United States* v. *Angelilli*, 660 F.2d 23, 31 (2d Cir. 1981) (New York City Civil Court); *United States* v. *Dean*, 647 F.2d 779, 791 (8th Cir. 1981) (office of county judge), rev'd on other grounds, 667 F.2d 729 (8th Cir. 1982) (en banc); *United States* v. *Karas*, 624 F.2d 500, 504 (4th Cir. 1980), cert. denied, 449 U.S. 1078 (1981) (county law enforcement officials); *United States* v. *Bacheler*, 611 F.2d 443, 450 (3d Cir. 1979) (traffic court); *United States* v. *Grzywacz*, 603 F.2d 682, 686 (7th Cir. 1979), cert. denied, 446 U.S. 935 (1980) (city police department); *United States* v. *Frumento*, 563 F.2d 1083, 1089-1092 (3d Cir. 1977), cert. denied, 434 U.S. 1072 (1978) (Pennsylvania Bureau of Cigarette and Beverage Taxes); *United States* v. *Brown*, 555 F.2d 407, 415-416 (5th Cir. 1977), cert. denied, 435 U.S. 904 (1978) (city police department). There is thus no reason to consider petitioner's contention that the ABCC is not a RICO "enterprise."

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[12] Section 1961(4) of RICO defines an "enterprise" as:

> * * * any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity[.]

7. Petitioner finally asserts (Pet. 55-57) that the government made improper use of his immunized testimony. This fact-bound claim was properly rejected by both courts below and does not warrant further review by this Court.

As the court of appeals observed (Pet. App. 7a-8a), even if the government had wrongly used the FBI 302 forms, the information they contained would have been of no use to the liquor withdrawal investigation. The forms contained petitioner's admission that he had collected between $50,000 and $70,000 in cash from liquor salesmen, employees of State Alcohol Beverage Control Stores and other individuals, and had delivered the money to the Governor of West Virginia for use in the 1972 gubernatorial campaign (III C.A. App. 1525-1530). This information in no way relates to 15 of the 20 counts in the indictment (Counts 3-11, 14-18, 20), which charged unrelated criminal activities after December 11, 1975, when petitioner testified before the grand jury (see I C.A. App. 32-53). Indeed, the only overlap between the Form 302 information and the indictment is limited to two of the 44 acts of racketeering alleged, which related to petitioner's collection of cash from two liquor companies during the 1972 gubernatorial campaign (I C.A. App. 21-22, 30).[13]

In any event, the government satisfactorily demonstrated that before it became aware of the forms it had

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[13] Twelve of the racketeering acts alleged concerned payments of money before the 1972 election (6u-6w, 6aa-6hh, 6rr; see I C.A. App. 21-22, 24-27, 30). Two were stricken by the trial court as legally insufficient (6w, 6rr). Eight others (6aa-6hh) were not related to the election, but were instead part of a systematic scheme of $1000, and then $500, payments made by American Distilling Company to petitioner from 1971 through 1975 (II C.A. App. 659-664, 666, 668-669).

already learned of their subject matter, and that it did not use the forms in connection with petitioner's case. This conclusion was arrived at by the trial court after pretrial hearings at which the court thoroughly inquired into the origin and progression of the liquor investigation (Pet. App. 80a-93a). Further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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U. S. GOVERNMENT PRINTING OFFICE: 1982 378430 1040